



February 17, 2006

ENGROSSED SENATE BILL No. 168

DIGEST OF SB 168 (Updated February 15, 2006 5:24 pm - DI 69)

Citations Affected: IC 12-15; IC 24-5.

Synopsis: Medicaid fraud and credit services organizations. Specifies that a prosecuting attorney may refer a case involving abuse or neglect of a Medicaid patient, in addition to Medicaid fraud, to the attorney general for prosecution. Provides that, for purposes of the law concerning credit services organizations: (1) the definition of "credit services organization" includes a person that sells the service of obtaining a delay or forbearance of a buyer's obligation under a mortgage; (2) the definition of "extension of credit" includes the right to delay or avoid foreclosure on a buyer's mortgage; (3) it is a deceptive act to take power of attorney from a buyer for any purpose other than inspecting documents as provided by law; and (4) a credit service organization must obtain a surety bond in the amount of \$25,000 instead of \$10,000 before doing business in Indiana.

Effective: July 1, 2006.

Miller, Ford

(HOUSE SPONSORS — FOLEY, THOMAS)

January 9, 2006, read first time and referred to Committee on Judiciary.
January 19, 2006, amended, reported favorably — Do Pass.
January 23, 2006, read second time, ordered engrossed. Engrossed.
January 24, 2006, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

February 2, 2006, read first time and referred to Committee on Courts and Criminal Code.
February 16, 2006, amended, reported — Do Pass.

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February 17, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 168

A BILL FOR AN ACT to amend the Indiana Code concerning the attorney general.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-15-23-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) If the state
3 Medicaid fraud control unit determines that an action based on the state
4 Medicaid fraud control unit's investigations under the unit's authority
5 under IC 4-6-10-1.5 is meritorious, the unit shall certify the facts drawn
6 from the investigation to the prosecuting attorney of the judicial circuit
7 in which the crime may have been committed.
8 (b) The state Medicaid fraud control unit shall assist the prosecuting
9 attorney in prosecuting an action under this section.
10 (c) A prosecuting attorney to whom facts ~~concerning alleged~~
11 ~~Medicaid fraud~~ are certified under subsection (a) may refer the matter
12 to the attorney general.
13 (d) If a matter has been referred to the attorney general under
14 subsection (c), the attorney general may:
15 (1) file an information in a court with jurisdiction over the matter
16 in the county in which the offense is alleged to have been
17 committed; and

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(2) prosecute the alleged offense.

SECTION 2. IC 24-5-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) As used in this chapter, "credit services organization" means a person that, with respect to the extension of credit by another person, sells, provides, performs, or represents that the person can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

(1) Improving a buyer's credit record, credit history, or credit rating.

(2) Obtaining an extension of credit for a buyer.

(3) Obtaining a delay or forbearance of a buyer's obligation under a mortgage.

~~(3)~~ **(4)** Providing advice or assistance to a buyer concerning the services described in subdivision (1), ~~or~~ (2), or ~~both~~ (3).

(b) The term "credit services organization" does not include any of the following:

(1) A person authorized to make loans or extensions of credit under state or federal laws that is subject to regulation and supervision under state or federal laws, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the federal National Housing Act (12 U.S.C. 1701 et seq.).

(2) A bank or savings association or a subsidiary of a bank or savings association that has deposits or accounts that are eligible for insurance by the Federal Deposit Insurance Corporation.

(3) A credit union doing business in Indiana.

(4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(5) A person licensed as a real estate broker under IC 25-34.1 if the person is acting within the course and scope of the person's license.

(6) A person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.

(7) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of the broker-dealer's regulation.

(8) A consumer reporting agency (as defined in the Federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)).

SECTION 3. IC 24-5-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this

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chapter, "extension of credit" means the right to:

- (1) defer payment of debt ~~or offered or granted primarily for personal, family, or household purposes;~~
- (2) incur debt and defer payment of the debt offered or granted primarily for personal, family, or household purposes; **or**
- (3) delay or avoid foreclosure on a buyer's residence.**

SECTION 4. IC 24-5-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. The following are deceptive acts:

(1) To charge or receive money or other valuable consideration before the complete performance of services that a credit services organization has agreed to perform for or on behalf of a consumer, unless the credit services organization has under section 8 of this chapter:

- (A) obtained a surety bond issued by a surety company admitted to do business in Indiana; or
- (B) established an irrevocable letter of credit.

(2) To charge or receive money or other valuable consideration to refer a buyer to a retail seller that will or may extend credit to the buyer if the extension of credit is made upon substantially the same terms as those available to the general public.

(3) To make or to advise a buyer to make a statement with respect to the buyer's creditworthiness, credit standing, or credit capacity that is:

- (A) false or misleading; or
- (B) that should be known by the exercise of reasonable care to be false or misleading;

to a consumer reporting agency or to a person that has extended credit to the buyer or to whom the buyer is applying for an extension of credit.

(4) To make or use a false or misleading representation in an offer to sell or a sale of the services of a credit services organization, including:

- (A) guaranteeing to "erase bad credit" or using words to that effect unless the representation clearly discloses that this can be done only if a person's credit history is inaccurate or obsolete;
- (B) guaranteeing an extension of credit regardless of the buyer's previous credit history unless the representation clearly discloses the eligibility requirements for obtaining the extension of credit; or
- (C) requiring a buyer to waive a right protected by a state or

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federal law.

(5) To take a power of attorney from a buyer for any purpose other than inspecting documents as provided by law.

SECTION 5. IC 24-5-15-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) Before doing business in Indiana, a credit services organization must obtain a surety bond in the amount of ~~ten~~ **twenty-five** thousand dollars ~~(\$10,000)~~ **(\$25,000)**, issued by a surety company authorized to do business in Indiana in favor of the state for the benefit of a person that is damaged by a violation of this chapter.

(b) The attorney general may waive the bonding requirement under subsection (a) and, instead of the bond, accept an irrevocable letter of credit for an equivalent amount issued in favor of the state for the benefit of a person that is damaged by a violation of this chapter.

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SENATE MOTION

Madam President: I move that Senator Ford be added as second author of Senate Bill 168.

MILLER

 COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 168, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 12.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 168 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 168, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning the attorney general.

Page 2, after line 1, begin a new paragraph and insert:

"SECTION 2. IC 24-5-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) As used in this chapter, "credit services organization" means a person that, with respect to the extension of credit by another person, sells, provides, performs, or represents that the person can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

(1) Improving a buyer's credit record, credit history, or credit

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rating.

(2) Obtaining an extension of credit for a buyer.

(3) Obtaining a delay or forbearance of a buyer's obligation under a mortgage.

~~(3)~~ **(4)** Providing advice or assistance to a buyer concerning the services described in subdivision (1), ~~or~~ (2), or ~~both~~ (3).

(b) The term "credit services organization" does not include any of the following:

(1) A person authorized to make loans or extensions of credit under state or federal laws that is subject to regulation and supervision under state or federal laws, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the federal National Housing Act (12 U.S.C. 1701 et seq.).

(2) A bank or savings association or a subsidiary of a bank or savings association that has deposits or accounts that are eligible for insurance by the Federal Deposit Insurance Corporation.

(3) A credit union doing business in Indiana.

(4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(5) A person licensed as a real estate broker under IC 25-34.1 if the person is acting within the course and scope of the person's license.

(6) A person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.

(7) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of the broker-dealer's regulation.

(8) A consumer reporting agency (as defined in the Federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)).

SECTION 3. IC 24-5-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this chapter, "extension of credit" means the right to:

(1) defer payment of debt ~~or offered or granted primarily for personal, family, or household purposes;~~

(2) incur debt and defer payment of the debt offered or granted primarily for personal, family, or household purposes; ~~or~~

(3) delay or avoid foreclosure on a buyer's residence.

SECTION 4. IC 24-5-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. The following are deceptive acts:

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(1) To charge or receive money or other valuable consideration before the complete performance of services that a credit services organization has agreed to perform for or on behalf of a consumer, unless the credit services organization has under section 8 of this chapter:

(A) obtained a surety bond issued by a surety company admitted to do business in Indiana; or

(B) established an irrevocable letter of credit.

(2) To charge or receive money or other valuable consideration to refer a buyer to a retail seller that will or may extend credit to the buyer if the extension of credit is made upon substantially the same terms as those available to the general public.

(3) To make or to advise a buyer to make a statement with respect to the buyer's creditworthiness, credit standing, or credit capacity that is:

(A) false or misleading; or

(B) that should be known by the exercise of reasonable care to be false or misleading;

to a consumer reporting agency or to a person that has extended credit to the buyer or to whom the buyer is applying for an extension of credit.

(4) To make or use a false or misleading representation in an offer to sell or a sale of the services of a credit services organization, including:

(A) guaranteeing to "erase bad credit" or using words to that effect unless the representation clearly discloses that this can be done only if a person's credit history is inaccurate or obsolete;

(B) guaranteeing an extension of credit regardless of the buyer's previous credit history unless the representation clearly discloses the eligibility requirements for obtaining the extension of credit; or

(C) requiring a buyer to waive a right protected by a state or federal law.

(5) To take a power of attorney from a buyer for any purpose other than inspecting documents as provided by law.

SECTION 5. IC 24-5-15-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) Before doing business in Indiana, a credit services organization must obtain a surety bond in the amount of ~~ten~~ **twenty-five** thousand dollars (~~\$10,000~~) (**\$25,000**), issued by a surety company authorized to do business in Indiana in favor of the state for the benefit of a person that is damaged

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by a violation of this chapter.

(b) The attorney general may waive the bonding requirement under subsection (a) and, instead of the bond, accept an irrevocable letter of credit for an equivalent amount issued in favor of the state for the benefit of a person that is damaged by a violation of this chapter."

and when so amended that said bill do pass.

(Reference is to SB 168 as printed January 20, 2006.)

ULMER, Chair

Committee Vote: yeas 9, nays 0.

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